

Number: **200802010**
Release Date: 1/11/2008
Index Number: 2055.00-00, 2518.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:PSI:04
PLR-125926-07

Date:
September 12, 2007

RE:

Legend

Decedent	=
Spouse	=
Daughter 1	=
Daughter 2	=
Trust 1	=
Trust 2	=
X	=
Y	=
Foundation 1	=
Foundation 2	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
State	=
State Statute 1	=
State Statute 2	=

Dear _____ :

This is in response to your letter from your authorized representative dated May 22, 2007, in which you request rulings under § 2518 and § 2055 of the Internal Revenue

Code.

The information submitted and the representations made are summarized as follows. Decedent, a resident of State, died testate on Date 1. Decedent was survived by Daughter 1 and Daughter 2. Decedent's husband, Spouse, predeceased Decedent. In accordance with Paragraph 2.1 of Decedent's will executed on Date 2, Daughter 1 and Daughter 2 were appointed as co-executrices of Decedent's estate. Paragraph 4.2 of Article IV of Decedent's will provides that the residue of Decedent's estate is to pass to Trust 1, a revocable trust created by Decedent during her life.

Paragraph 5.4(a)(ii) of Article V of Trust 1 provides that on the death of Decedent, if the Decedent dies with issue surviving, the trustee shall determine the amount of the Decedent's unused Generation-Skipping Transfer Tax exemption (as provided for in § 2631(a) of the Internal Revenue Code of 1986, as amended) available immediately before the Decedent's death. The trustee shall distribute such amount equal to the then trustees of Trust 2 established by Trust Agreement dated Date 3, executed by Spouse and Decedent, as grantors, and Daughter 1, X, and Y, as trustees, to be administered under the terms and provisions thereof.

Paragraph 5.4(b)(ii) of Trust 1 provides that if the Decedent's husband does not survive the Decedent, but the Decedent dies with issue surviving, the entire balance of the trust property shall be distributed to the children of the Decedent, with the issue of any deceased child to take the share of their parent, per stirpes.

Paragraph 5.5 of Trust 1, as amended, provides that if a daughter of the Decedent disclaims or renounces in whole or in part any property passing to her outright under Trust 1, or any property or interest she would, but for the disclaimer or renunciation, succeed to by reason of the Decedent's death, the Decedent directs that such disclaimed or renounced property shall be distributed to a certain private foundation, which organization is a tax exempt organization under the Internal Revenue Code § 501(c)(3), established or to be established by said daughter and administered in accordance with the terms and provisions of the private foundation. Any such property and provisions by Daughter 1 shall be distributed to a private foundation to be known as Foundation 1, and any such property disclaimed or renounced by Daughter 2 shall be distributed to a private foundation to be known as Foundation 2.

Daughter 1 and Daughter 2 each propose to disclaim all of their interest in some of the securities passing to each of them under Trust 1, as to be specified under the terms of Paragraph 5.5. As a result of the proposed disclaimers, the property proposed to be disclaimed by Daughter 1 will pass to a foundation established by her on Date 4, and known as Foundation 1. Foundation 1 is organized under § 501(c)(3) and operated exclusively for religious, charitable, scientific, literary, or educational purposes. Foundation 1 has received a letter from the Internal Revenue Service concluding that Foundation 1 is an organization that is exempt from federal income tax under §

501(c)(3). Foundation 1 will segregate the disclaimed funds passing to it from the other property and maintain such disclaimed assets as a separate fund during the lifetime of Daughter 1.

The assets proposed to be disclaimed by Daughter 2 will pass to a foundation established by her on Date 5, and known as Foundation 2. Foundation 2 is organized under § 501(c)(3) and operated exclusively for religious, charitable, scientific, literary, or educational purposes. Foundation 2 has received a letter from the Internal Revenue Service concluding that Foundation 2 is an organization that is exempt from federal income tax under § 501(c)(3). Foundation 2 will segregate the disclaimed funds passing to it from the other property and maintain such disclaimed assets as a separate fund during the lifetime of Daughter 2.

Investment decisions of all funds of Foundation 1 and Foundation 2 will be made by the Board of Directors of each foundation, of which Daughter 1 is a member of Foundation 1 and Daughter 2 is a member of Foundation 2. The By-laws of Foundation 1 and Foundation 2 have been amended to provide that any assets deposited to Foundation 1 or Foundation 2 as a result of a qualified disclaimer executed and filed in accordance with § 2518 by any director or officer of the foundation shall be segregated and maintained in a separate account from the other assets of the foundation. In addition, all determinations with respect to the recipient(s) of the separate account funded by the disclaimed assets, and/or all income earned on the separate account funded by the disclaimed assets, shall be made by a majority vote of the Board of Directors of each foundation, excluding the “disclaimant,” or by a majority vote of the Executive Committee of each foundation, excluding the “disclaimant”. Accordingly, Daughter 1 and Daughter 2 will not have the power to make any determination with respect to the recipients of distributions of income or principal from the segregated funds of Foundation 1 or Foundation 2, respectively.

Article VIII, paragraph 8.1 provides that Trust 1 is governed by the laws of State. Under State Statute 1, a person may disclaim, in whole or in part, any interest in or power over property. To be effective, a disclaimer must be in writing, declare the disclaimer, describe the interest disclaimed, be signed by the person making the disclaimer, be acknowledged in such a manner as would authorize a deed to be admitted of record, and be delivered or filed in the manner provided. A disclaimer becomes irrevocable when it is delivered, filed or recorded. A disclaimer made is not a transfer, assignment or release and relates back for all purposes to the time the disclaimer takes effect. Under State Statute 2, the disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable. The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general. Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution.

The following rulings are requested:

1. The proposed disclaimers by Daughter 1 and Daughter 2 will constitute qualified disclaimers under § 2518.
2. Assuming that the disclaimers are qualified disclaimers for purposes of § 2518, the property passing to Foundation 1 and Foundation 2 as a result of the disclaimers will be eligible for the estate tax charitable deduction in accordance with § 2055(a).

Ruling 1

Section 2046 provides that for estate tax purposes, disclaimers of property interests passing upon death are treated as provided in § 2518.

Section 2518(a) provides that, if a person makes a qualified disclaimer with respect to any interest in property, the federal estate, gift, and generation-skipping transfer tax provisions will apply with respect to such interest as if the interest had never been transferred to such person.

Under § 2518(b), the term "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property, but only if: (1) such refusal is in writing; (2) such writing is received by the transferor of the interest, the transferor's legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is nine months after the later of (A) the date on which the transfer creating the interest in such person is made, or (B) the day on which such person attains age twenty-one; (3) the person disclaiming the interest has not accepted the interest or any of its benefits; and (4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either (A) to the spouse of the decedent, or (B) to a person other than the person making the disclaimer.

Section 2518(c)(1) provides that a disclaimer with respect to an undivided portion of an interest which meets the requirements of § 2518(b) shall be treated as a qualified disclaimer of such portion of the interest.

Under § 25.2518-1(b) of the Gift Tax Regulations, if a qualified disclaimer is made, the disclaimed property is treated, for federal gift, estate, and generation-skipping transfer tax purposes, as passing directly from the transferor, and not from the disclaimant, to the person entitled to receive the property as a result of the disclaimer. Accordingly, the person making a qualified disclaimer is not treated as making a gift.

Section 25.2518-2(d)(2) provides, in pertinent part, that if a beneficiary who disclaims an interest in property is also a fiduciary, the disclaimant cannot retain a

wholly discretionary power to direct the enjoyment of the disclaimed interest. For example, a fiduciary's disclaimer of a beneficial interest does not meet the requirements of a qualified disclaimer if the fiduciary exercised or retains a discretionary power to allocate enjoyment of that interest among members of a designated class.

Under § 25.2518-2(e)(1), in general, a disclaimer is not a qualified disclaimer unless the disclaimed interest passes without any direction on the part of the disclaimant to a person other than the disclaimant. The disclaimer will not be qualified if the disclaimant, either alone or in conjunction with another, directs the redistribution or transfer of the property or interest in property to another person (or has the power to direct the redistribution or transfer of the property or interest in property to another person unless such power is limited by an ascertainable standard).

Section 25.2518-3(a)(1)(i) provides that if the requirements of the section are met, the disclaimer of all or an undivided portion of any separate interest in property may be a qualified disclaimer even if the disclaimant has another interest in the same property.

Section 25.2518-3(a)(2) provides, in part, that a disclaimer of both an income interest and a remainder interest in specific trust assets is not a qualified disclaimer if the beneficiary retains interest in other trust property unless, as a result of the disclaimer, such assets are removed from the trust and pass, without any direction on the part of the disclaimant, to persons other than the disclaimant or to the spouse of the decedent. The disclaimer of an undivided portion of an interest in a trust may be a qualified disclaimer.

Section 25.2518-3(b) provides that the disclaimer of an undivided portion of a separate interest in property which meets the other requirements of a qualified disclaimer under § 2518(b) and the corresponding regulations is a qualified disclaimer. An undivided portion of a disclaimant's separate interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the disclaimant in such property and must extend over the entire term of the disclaimant's interest in such property and in other property into which such property is converted. See § 25.2518-3(d), Example 20, regarding the disclaimer of a fractional share of a residuary bequest.

In Rev. Rul. 72-552, 1972-2 C.B. 525, the decedent, who was the president and a director of a corporation organized under § 501(c)(3), transferred property to the corporation. In his capacity as president and a director, the decedent, in conjunction with the other directors of the corporation, had the power to direct the disposition of the corporation's funds for charitable purposes. The ruling holds that, because the decedent retained the right, in conjunction with others, to designate the entities that would possess or enjoy the property transferred to the corporation, the property transferred by the decedent to the corporation was included in the decedent's gross

estate at his death under § 2036.

In the present case, Daughter 1 and Daughter 2 propose to disclaim all of their respective interest in some of the securities passing to each of them pursuant to Trust 1. Under Paragraph 5.5 of Trust 1, the property proposed to be disclaimed by Daughter 1 will pass to Foundation 1 and the property proposed to be disclaimed by Daughter 2 will pass to Foundation 2. Pursuant to the terms of the amendments to the By-laws of Foundation 1 and Foundation 2, the property passing to each Foundation as a result of the disclaimer shall be segregated and maintained in a separate account from the other assets of each foundation, respectively. Accordingly, Daughter 1 and Daughter 2 will not have the power to make any determination with respect to the recipients of distributions of income or principal from the segregated funds of Foundation 1 or Foundation 2, respectively.

Therefore, we conclude that the proposed disclaimer will constitute a qualified disclaimer under § 2518 provided the disclaimer otherwise complies with the requirements of § 2518 and the applicable regulations including § 25.2518-3.

Ruling 2

Under § 2055(a)(2), for estate tax purposes, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes. A corporation that qualifies under § 501(c)(3) is one that is organized and operated exclusively for these purposes.

Section 20.2055-2(c)(1)(i) of the Estate Tax Regulations provides that in the case of a bequest, devise, or transfer made by a decedent dying after December 31, 1976, the amount of a bequest, devise, or transfer for which a deduction is allowable under § 2055 includes an interest which falls into the bequest, devise, or transfer as the result of a qualified disclaimer under § 2518.

Under the terms of Trust 1, property that is disclaimed by Daughter 1 or Daughter 2 as a result of the disclaimer will pass to Foundation 1 and Foundation 2, respectively, provided Foundation 1 and Foundation 2 are qualified charitable organizations. Foundation 1 has received a letter from the Internal Revenue Service concluding that Foundation 1 is an organization described in § 501(c)(3). Accordingly, based on the facts presented and the representations noted above, the property that passes to Foundation 1 as a result of Daughter 1's disclaimer will qualify for an estate tax charitable deduction under § 2055, provided that Daughter 1's disclaimer is a qualified disclaimer under § 2518. Foundation 2 has received a letter from the Internal Revenue Service concluding that Foundation 2 is an organization described in § 501(c)(3). Accordingly, based on the facts presented and the representations noted above, the

property that passes to Foundation 2 as a result of Daughter 2's disclaimer will qualify for an estate tax charitable deduction under § 2055, provided that Daughter 2's disclaimer is a qualified disclaimer under § 2518.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Lorraine E. Gardner
Senior Counsel, Branch 4
(Passthroughs & Special Industries)

Enclosures (2)
Copy for § 6110 purposes
Copy of this letter